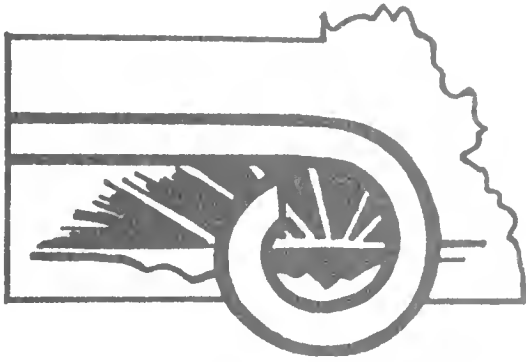


April 1990

This brochure was cooperatively developed and funded by the Montana Association of Conservation Districts, the Montana Department of Natural Resources and Conservation, the U.S. Environmental Protection Agency, the Montana Department of Health and Environmental Sciences, the Montana Department of Fish, Wildlife and Parks, the Montana Department of State Lands, and the U.S. Army Corps of Engineers.

Montana Association of Conservation Districts
501 North Sanders • Helena, MT 59601



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A Guide to

Stream Permitting
in Montana

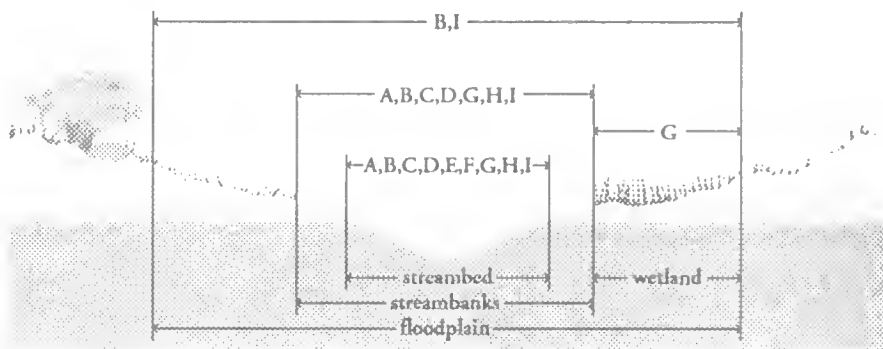
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OTHER LAWS THAT MAY APPLY, DEPENDING UPON LOCATION AND ACTIVITY

Shoreline Protection Act

Applies to all private individuals and government entities doing any type of construction work in or near any stream, river, lake, or wetland on the Flathead Reservation.

Contact: Shoreline Protection Office, Flathead Reservation Tribal complex
Box 278
Pablo, MT 59855
(406) 675-2700 ext. 368

Lakeshore Protection Act

Contact: County Government Offices

General Mining Laws/Small Miner's Placer and Dredge Operations

Contact: Montana Department of State Lands' Area Land Offices
or
Montana Department of State Lands, Reclamation Division
1625 Eleventh Avenue
Helena, MT 59620
(406) 444-2074

Montana Pollutant Discharge Elimination System (MPDES permit)

Applies to all discharges to surface or groundwater, including construction dewatering discharges and placer mining.

Contact: Water Quality Bureau
Montana Department of Health and Environmental Sciences
A-206 Cogswell Building
Helena, MT 59620
(406) 444-2406

County Building and Septic System Installation Codes and Regulations

Contact: County Sanitarian/Building Inspector

FEDERAL RIVERS AND HARBORS ACT

Who Must Apply

Any person, agency, or entity, either public or private, proposing construction activity in or near, or alteration of any navigable water of the United States.

Activities Requiring a Permit

The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters. Navigable waters in Montana are the Missouri River from Three Forks downstream to the Montana-North Dakota border, the Yellowstone River from Emigrant downstream to its confluence with the Missouri River, and the Kootenai River from the Canadian border downstream to Jennings, Montana.

Purpose of the Law

- To protect the quality and quantity of navigable waters of the United States.

Who Administers the Law

The U. S. Army Corps of Engineers.

Application Procedure/Timeline

Applications must be submitted to the appropriate Corps of Engineers' office for review. Project approval may take 60-90 days. Application fees for individual permits may vary from \$10 for private individuals to \$100 for commercial applicants.

For more information in Western Montana contact:

U. S. Army Corps of Engineers
1520 East Sixth Avenue
Helena, MT 59620
(406) 444-6670

In Eastern Montana contact:

U.S. Army Corps of Engineers
Regulatory Office, Room 218
Federal Building and Post Office
2602 1st Avenue North
Billings, MT 59101
(406) 657-6891

GUIDE TO REQUIRED PERMITS

Using the diagram above, determine where your project will take place: streambed, streambanks, wetlands, or floodplain. The letters in the diagram refer to the required permits listed below and described on the following pages.

Permits that may be necessary:

- A. Montana Stream Protection Act (124 Permit)
- B. Montana Floodplain and Floodway Management Act (Floodplain Development Permit)
- C. Short-term Exemption from Montana's Surface Water Quality Standard (3A Authorization)
- D. Montana Natural Streambed and Land Preservation Act (310 Permit)
- E. Montana Land-Use License or Easement on Navigable Waters
- F. Montana Water Use Act (Water Right Permit)
- G. Federal Clean Water Act (404 Permit)
- H. Federal Rivers and Harbors Act
- I. Other laws that may apply, depending upon your location and activity

MONTANA STREAM PROTECTION ACT
(124 Permit)

Who Must Apply

Any agency or subdivision of federal, state, county, or city government proposing a project which may affect the bed or banks of any stream in Montana.

Activities Requiring a Permit

Any project including the construction of new facilities or the modification, operation, and maintenance of an existing facility which may affect the natural existing shape and form of any stream or its banks or tributaries.

Purpose of the Law

- To protect and preserve fish and wildlife resources in their natural existing state.

Who Administers the Law

The Department of Fish, Wildlife and Parks (DFWP).

For more information in Eastern Montana contact:

U.S. Army Corps of Engineers
Regulatory Office, Room 218
Federal Building and Post Office
2602 1st Avenue North
Billings, MT 59101
(406) 657-6891

FEDERAL CLEAN WATER ACT (404 Permit)

Who Must Apply

Any person, agency, or entity, either public or private, proposing a project that will result in the discharge or placement of dredged or fill material into waters of the United States, including wetlands.

Activities Requiring a Permit

Any activity that will result in the discharge of dredged or placement of fill material into waters of the United States, including their adjacent wetlands.

Purpose of the Law

- To restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

Who Administers the Law

The U. S. Army Corps of Engineers. The Environmental Protection Agency also has regulatory review and enforcement functions under the law.

Application Procedure/Timeline

Any person, agency, or entity, either public or private, planning a project must submit an application to the appropriate Corps regulatory office for review. Permit authorization varies depending on size and scope of the intended projects. Activities that meet the conditions for a Nationwide Permit may be approved in a week or less by the state Corps office. Individual and General Permits are processed individually and require a public review period. Permit approval may take 60 to 90 days. Application fees for individual permits may vary from \$10 for private individuals to \$100 for commercial applicants.

For more information in Western Montana contact:

U. S. Army Corps of Engineers
1520 East Sixth Avenue
Helena, MT 59620
(406) 444-6670

Application Procedure/Timeline

Any agency planning a project must submit a Notice of Construction (application) to the Department of Fish, Wildlife and Parks, which has up to 60 days to review the application, perform an on-site investigation, and approve, modify, or deny the application. There is no application fee.

For more information contact:

Habitat Protection Bureau
Fisheries Division
Department of Fish, Wildlife and Parks
1420 East Sixth Avenue
Helena, MT 59620
(406) 444-2449

MONTANA FLOODPLAIN AND FLOODWAY MANAGEMENT ACT

(Floodplain Development Permit)

Who Must Apply

Anyone planning new construction within the designated 100-year floodplain. Check with local planning officials or the Floodplain Management Section of the Department of Natural Resources and Conservation to determine whether a 100-year floodplain has been designated for the stream of interest.

Activities Requiring a Permit

New construction including, but not limited to, placement of fill, roads, bridges, culverts, transmission lines, irrigation facilities, storage of equipment or materials, excavation, and new construction of or additions to mobile homes and residential and commercial buildings.

Purpose of the Law

- To restrict floodplain and floodway areas to uses that will not be seriously damaged or present a hazard to life, if flooded, thereby limiting the expenditure of public tax dollars for emergency operations and disaster relief.
- To maintain a general adjudication of all existing water rights in the state.
- To implement a centralized record system in addition to the local courthouse records.

Who Administers the Law

The Water Rights Bureau of the Department of Natural Resources and Conservation (DNRC).

Application Procedure/Timeline

Water right application forms are available at all 56 County Clerk and Recorder's offices and at the nine Water Rights Field Offices located in Miles City, Billings, Bozeman, Helena, Glasgow, Lewistown, Missoula, Kalispell, and Havre.

Water right applications may take up to six months to complete. Application fees range from \$50.00 to \$250.00, depending on the volume of water requested for appropriation, and whether the use is consumptive or nonconsumptive.

For more information, contact:

Water Rights Bureau
Department of Natural Resources and Conservation
1520 E. Sixth Ave.
Helena, MT 59620
(406) 444-6610
or
Water Rights Field Offices

MONTANA WATER USE ACT (Water Right Permit System)

Who Must Apply

Any person, agency or governmental entity intending to acquire new or additional water rights in the state.

When Is A Permit Required

General Rule - a person must obtain a beneficial water use permit before commencing to construct new or additional diversion, withdrawal, impoundment, or distribution works for any surface water or groundwater of 100 gallons per minute or more.

Exceptions - groundwater appropriations of less than 100 gallons per minute or stockwater impoundments of less than 15 acre-feet must first be appropriated and put to beneficial use before a water right will be issued.

Types of Water Rights

Provisional Permit - Grants the use of water for a specific amount and purpose.

Temporary Permit - The same as the provisional permit, except it has an expiration date.

Interim Permit - Issued for testing purposes only. Cannot appropriate water with this permit.

Certificate of Water Right - Issued on groundwater appropriations of less than 100 gallons per minute.

Authorization to Change - Allows an appropriator with a recognized water right to change the place of use, point of diversion, purpose of use or place of storage and maintain the priority date of the initial water right.

Purpose of Law

- To provide a permit and certificate system of water rights administration similar to systems used in other Western states.

Who Administers the Law

Floodplain Development Permits are available from the local floodplain coordinator, who may be the city/county planner, sanitarian, building inspector, town clerk, or county commissioner.

Application Procedure/Timeline

Permit applications are available from the local floodplain coordinator or from the Department of Natural Resources and Conservation. Application fees are established by the local government and vary widely throughout the state. The application process may take up to 60 days.

Information and assistance may be obtained from:

Floodplain Management Section
Department of Natural Resources and Conservation
1520 E. Sixth Ave.
Helena, MT 59620
(406) 444-6646
or
County Floodplain Development Coordinator

**SHORT-TERM EXEMPTION FROM MONTANA'S
SURFACE WATER QUALITY STANDARDS
(3A Authorization)**

Who Must Apply

Any person, agency, or entity, both public and private, initiating a short-term activity that may cause unavoidable short-term violations of state surface water quality standards for turbidity, total dissolved solids, or temperature.

Activities Requiring An Authorization

Any activity in any state water that will cause unavoidable short-term violations of water quality standards.

Purpose of the Law

- To provide short-term exemptions from water quality standards to certain activities carried out in accordance with conditions prescribed by the Department of Health and Environmental Sciences.
- To protect water quality.
- To minimize sedimentation.

Who Administers the Law

The Water Quality Bureau, Department of Health and Environmental Sciences.

Bureau in Helena, which makes the final determination and recommends stipulations as necessary. A Land-Use License can be approved and issued within 14 days upon the payment of the \$25 application fee and the one-time rental of \$100 per acre. The license may be held for a maximum period of 20 years, with the ability to renew for an additional 20 years with the payment of just the \$25 application fee. An easement requires approval from the Board of Land Commissioners which may take up to 45 days. The easement application fee is \$50 with an additional easement rental that varies based upon the appraised value of the property.

For more information contact:

DSL Area Land Offices

or

Department of State Lands

Surface Management Bureau

1625 Eleventh Avenue

Helena, MT 59620

(406) 444-2074

MONTANA LAND-USE LICENSE OR EASEMENT ON NAVIGABLE WATERS

Who Must Apply

Any entity proposing a project on lands below the low water mark of navigable waters as determined by the Department of State Lands.

Activities Requiring a Permit

The construction or placement of a structure or improvement on lands below the low water mark of navigable streams. Customary and historic maintenance and repair of existing irrigation facilities or activities that do not alter, modify, or change the existing shape or impact the potential navigability of the waterway are exempt.

Purpose of the Law

- To protect riparian areas and the navigable status of the waterbody.
- To provide for the beneficial use of state lands for public and private purposes in a manner which will provide revenues without harming the long-term capability of the land or restricting the original commercial navigability.

Who Administers the Law

The Department of State Lands (DSL).

Application Procedure/Timeline

A DSL land use or easement application must be submitted to the appropriate Area Land Office, located in Kalispell, Missoula, Havre, Lewistown, Billings, or Miles City. The Area Office staff will review the application, conduct a field investigation if necessary, and file an environmental action checklist. A written report and recommendation is then submitted to the Resource Development

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Application Procedure/Timeline

A 3A Authorization must be obtained prior to initiating a project. The Authorization may be obtained from the Water Quality Bureau, or may be waived by the Department of Fish, Wildlife and Parks during its review process under the Natural Streambed and Land Preservation Act (310 permit) or the Stream Protection Act (124 permit). Individual applications submitted to the Water Quality Bureau are normally processed within 14 days. Authorizations waived under the 310 or 124 permit processes correspond to the time frame under each permit system, usually 30-60 days. There is no application fee.

For more information contact:

Water Quality Bureau
Department of Health and Environmental Sciences
A-206 Cogswell Building
Helena, MT 59620
(406) 444-2406

MONTANA NATURAL STREAMBED AND LAND PRESERVATION ACT

(310 Permit Program)

Who must apply

Any private non-governmental individual or corporation that proposes to work in or near a stream on public or private land.

Activities Requiring a Permit

Any activity that physically alters or modifies the bed and banks of a stream.

Purpose of the Law

- To minimize soil erosion and sedimentation.
- To maintain water quality and stream channel integrity.
- To prevent property damage to adjacent landowners.

Who Administers the Law

The board of supervisors of the conservation district in which the project takes place.

Application Procedure/Timeline

A person planning a project must contact the conservation district office to obtain a permit application prior to any activity in or near a stream. After submission of an application to the conservation district office, district supervisors must determine within five days of their monthly meeting if the proposed activity requires a 310 permit. If a permit is required, a team composed of a district supervisor; a Department of Fish, Wildlife and Parks biologist; and the landowner conduct a site inspection.

The supervisors have 60 days from the date of application to approve or deny the permit. There is no charge for a 310 permit.

For more information contact:

Your local conservation district

or

Montana Association of Conservation Districts

501 North Sanders

Helena, MT 59620

(406) 443-5711

or

Conservation Districts Bureau

Department of Natural Resources and Conservation

1520 East Sixth Street

Helena, Montana 59620-2301

(406) 444-6667 Helena

(406) 232-6359 Miles City